

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: July 9, 2012

Opposition No. 91164764

Brink's Network, Incorporated

v.

The Brinkmann Corporation

Jennifer Krisp, Interlocutory Attorney:

This proceeding is before the Board for consideration of opposer's motion (filed June 15, 2012) to extend the close of discovery and testimony periods. The motion has been fully briefed.¹

In association with considering opposer's motion for summary judgment, the Board resumed proceedings and reset discovery to close June 15, 2012. On that date, opposer moved to extend the close of discovery, and trial dates, by sixty (60) days.

Analysis

¹ In its discretion, and to avoid delay, the Board considers the merits of opposer's motion prior to the time allowed for filing a reply brief thereon. See TBMP § 502.02(b) (3d ed. rev. 2012); Cf. TBMP § 502.06(a) (3d ed. rev. 2012); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1720 n.3 (TTAB 1989).

Opposer's May 31, 2012 answer to applicant's December 20, 2010 counterclaims asserted in its answer to opposer's third amended notice of opposition, is noted and is of record.

A party may file a motion for an enlargement of the time in which an act is required or allowed to be done. If the motion is filed prior to the expiration of the period as originally set or previously reset, the motion is a motion to extend, and the moving party need only show *good cause* for the requested extension. See Fed. R. Civ. P. 6(b).

A party moving to extend time must demonstrate that the requested extension is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor. See TBMP § 509.01 (3d ed. rev. 2012). The party retains the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded additional time. See *National Football League v. DNH Mgt. LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008). The movant must state with particularity the facts said to constitute good cause for the requested extension of time; mere conclusory allegations lacking in factual detail are insufficient. See *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999).

Opposer seeks an extension of time in which to, inter alia, conclude discovery, and in particular to take additional discovery directed to applicant's responses served February 22, 2011, after the Board suspended proceedings pursuant to Trademark Rule 2.127(d). Opposer also cites the complexity of

Counsel for applicant's change of correspondence address, filed July 2, 2012, is noted and has been entered in the Board's records for this proceeding.

issues presented in this opposition, and the need to accommodate due dates and prior commitments in other proceedings being handled by counsel.

In contesting the motion, applicant argues, inter alia, that opposer should not be granted additional time which it was not entitled to in the first place, asserting that opposer waited until January 2, 2011 to serve its fourth set of interrogatories and third set of requests for production, and that applicant's responses thereto were, thus, due after the then-reset January 21, 2011 close of discovery. Applicant asserts that, if opposer's motion for summary judgment had not been filed, opposer would not have been entitled to take additional discovery. Applicant also argues that the issues on which opposer seeks discovery are unnecessary and ancillary to the likelihood of confusion and dilution issues, and that the parties can obtain additional discovery through supplementation or during trial.

Opposer's motion is supported by sufficient factual detail, and does not rest on mere conclusions. While the Board notes that various motions have occasioned periods of suspension and delay, opposer's current discovery needs do not appear to have been necessitated by its own lack of diligence or unilateral delay. Although the Board encourages parties to serve discovery early, a party may serve discovery up until the last day of that period, as set or as reset, and the schedule imposed by the Board in inter partes proceedings acknowledges

that responses thereto can be, and in many cases are, served after the close of the discovery period. See TBMP § 403.03 (3d ed. rev. 2012). Furthermore, if this proceeding had not been suspended for consideration of the potentially dispositive motion, opposer would have at least been entitled to request additional discovery to accommodate its needs, as appropriate. Accordingly, to the extent that applicant argues that opposer now seeks what it was not or would not have been entitled to, the assertion is unpersuasive.

Finally, applicant does not articulate any particular prejudice to it that would result from extending discovery, such as the unavailability of witnesses or information. The record does not indicate any apparent prejudice, other than further delay.

Having thoroughly reviewed the record and circumstances, the Board finds that opposer has demonstrated good cause for the extension of time it seeks. Accordingly, opposer's motion to extend is granted.

Schedule

The close of discovery, and testimony periods, are hereby reset as follows:

Discovery to close: 8/14/2012

30-day testimony period for
plaintiff in the opposition to close: 11/12/2012

30-day testimony period for defendant
in the opposition and as plaintiff in
the counterclaim to close:
1/11/2013

30-day testimony period for defendant
in the counterclaim and its rebuttal
testimony as plaintiff in the
opposition to close: 3/12/2013

15-day rebuttal testimony period for
plaintiff in the counterclaim to
close: 4/26/2013

Briefs shall be due as follows:
[See Trademark rule 2.128(a)(2)]

Brief for plaintiff in the opposition
shall be due: 6/25/2013

Brief for defendant in the opposition
and as plaintiff in the counterclaim
shall be due: 7/25/2013

Brief for defendant in the
counterclaim and its reply
brief (if any) as plaintiff in the
opposition shall be due: 8/24/2013

Reply brief (if any) for plaintiff in
the counterclaim shall be due: 9/8/2013

In each instance, a copy of the transcript of
testimony, together with copies of documentary exhibits,
must be served on the adverse party within thirty days after
completion of the taking of testimony. Trademark Rule
2.125.

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Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.